



## SCOTTISH EXECUTIVE

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Voluntary Issues Unit

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Consultees

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Our ref: CLE/011/002

20 September 2005

Dear consultee,

***Consultation on the Proposals For Regulations Under Section 15 On Charity References In Documents***

I am pleased to enclose a copy of the consultation paper Proposals for Regulations Under Section 15 on Charity References in Documents published today. The consultation paper outlines the Scottish Executive's proposals for the regulations under section 15 of the Charities and Trustee Investment (Scotland) Act 2005.

This consultation is your opportunity to have your say about these plans before the regulations are drafted and laid before the Scottish Parliament. Although we have posed specific questions on the proposals, and **to ease collation of responses it would be helpful if you respond on the summary sheet provided**, your views on any aspect of the proposals within this document are welcome. Further copies of all the enclosed documents are available from the address above, or on our website at <http://www.scotland.gov.uk/consultations>. Additional background information is available on our website at [www.scotland.gov.uk/viu](http://www.scotland.gov.uk/viu).

The consultation has been copied to all those individuals and organisations who responded to the consultation on the Bill. It has also been forwarded to a range of key stakeholders in charity law reform. A list of organisations consulted is attached.

Please respond to this consultation in writing or by email, attaching also a completed responsee information form, to the address above by **13 December 2005**, all responses will be acknowledged. It is Scottish Executive policy on public consultations that we will publish all responses (for which we have permission to publish) on our consultation website in due course. However, if the responsee form is not returned completed with the response, we are not able to make your response public. Thank you for your valuable engagement in the on-going debate on charity law reform in Scotland.

Yours faithfully

**Richard Arnott**  
Head of Charity Law  
Voluntary Issues Unit



**Consultation on the Proposals For Regulations Under Section 15 On Charity References In Documents has been sent to the following.**

4 -consulting limited	Charity Commission
Aberdeen City Council	Charity Law Research Unit
	Chartered Institution of Building Services Engineers
Aberdeen Council of Voluntary Organisation	Children 1st
Aberdeen Cyrenians	Children in Scotland
Aberdeenshire Council	CIPFA
Aberlour Child Care Trust	CISWO
ACCORD Hospice	Citizens Advice Scotland
Adam & Company Investment Management Ltd	Clarkston Preschool Playgroup
Alcohol Focus Scotland	CLIC Scotland
Alexander Sloan	Comhairle nan Eilean Siar
Alzheimer Scotland	Communities Scotland
Anderson Strathern	Contact a Family Scotland
Angus Council	Co-operation & Mutuality Scotland c/o Scotmid Society
Animal Concern Advice Line and Save our Seals Fund c/o Animal Concern	COSLA
Annandale & Eskdale CVS	Council of Mortgage Lenders
Argyll & Bute Council	Council of Voluntary Services Ltd,
	Clarkmannanshire Council for Voluntary Services
Arthritis Care in scotland	Couple Counselling Scotland
Association of charity shops	Cultural Commission
Association for Charities	CVS fife
Association for International Cancer Research	CVS Hamilton/East Kilbride
Association of British Credit Unions Ltd	CVS Perth & Kinrossc/o Perth & Kinross
Association of Charity Independent Examiners	Association of Voluntary Service
Association of Medical Research Charities	CVS West Dunbartonshire
Association of Medical Research Charities	Diocese of Galloway
Association of Scottish Colleges	Donaldson's College for Deaf
Association of Scottish Community Councils	Dumfries & Galloway College
Ayr Housing Aid Centre	Dumfries & Galloway Council
Barnardo's Scotland	Dumfries Welfare Rights
Bates, Wells & Braithwaite	Dundee City Council
Bield Housing Association Limited	Dunfermline Sound
Biggart Baillie Solicitors	
Brakeley Fundraising and Management Consultants	East Dunbartonshire Council
British Heart Foundation	East Lothian District Council
British Red Cross	East Renfrewshire Council
BTCV Scotland	ECAS
Cancer Research UK	Edinburgh & Leith Age Concern
Capability Scotland	Edinburgh City Council
CAPS	Edinburgh Rudolf Steiner School
Catholic Bishops' Conference of Scotland	Edinburgh Tenants Federation
Central Fife Association for Mental Health Office 1	Edinburgh Voluntary Organisations' Council

ELCAP  
Enterprise Childcare  
Erskine Stewart's Melville Schools  
Fairbridge in Scotland  
Falkirk Council  
Fife Council  
Fife Shopmobility Ltd  
Forensic Investigations  
Forget me not club  
Foundation of science and Technology  
Friends of Mount St Michael  
  
Friends of the Earth Scotland  
Friends of the Ochils  
Fundraising Initiatives Ltd  
George Watson's College  
Gerrard Ltd  
Girlguiding Scotland  
Glasgow City Council  
Glasgow Council for the Voluntary Sector  
Glasgow Housing Association  
Grant Thornton  
Guide Dogs for the Blind Association  
Help the Aged  
Henderson Loggie  
Heriot-Watt University  
Highland Hospice  
Highlands and Islands Arts Ltd  
Hospital Broadcasting Association  
Humanist Society of Scotland  
ICSA International  
Independent Services Agency Ltd  
Institute Members in Scotland, Institute of Chartered Accountants  
Institute of Fundraising, Scotland  
Institute of Physics  
Institution of Civil Engineers  
International Play Association  
Inverclyde Council  
J & H Mitchell Solicitors and Estate Agents  
Jordans (Scotland) Limited  
Keep Scotland Beautiful  
Learning Link Scotland  
  
Lerwick Youth Hostel & Garrison Theatre  
Limited Shelter Trading Ltd  
Lindsays WS  
Link Group Limited  
Lister Housing Co-operative Limited  
Lloyds TSB Foundation for Scotland  
Macmillan Cancer Relief  
Management Development Network Scotland  
Mid Argyll Arts Association  
Mid-Fife Newstape  
Midlothian Council  
Midlothian Voluntary sector Forum & Midlotian social Inclusion Forum  
Momentum  
Moray Council  
Motherwell Guild of Help  
MVSO  
National Galleries of Scotland  
National Galleries of Scotland  
National Library of scotland  
National Museums of Scotland  
National Playbus Association  
National Trust of Scotland  
National Union of Students Scotland  
NCVO  
NDCS Scotland  
Newton Investment Management  
NHS Lothian  
Norman, Downie & Kerr Ltd  
North Ayrshire Council  
North lanarkshire Council  
NUS Scotland  
  
Office of the Scottish Charity Regulator  
Open University  
Orkney Islands Council  
Oxfam in Scotland  
Pagan Osborne  
Perth and Kinross Council  
PFRA Scotland  
Play Scotland  
Powerful Partnerships  
PricewaterhouseCoopers

Public Fundraising Regulatory Association Scotland	Scottish pre-school play Association
Quarriers	Scottish Railway Preservation Society
R L Glasspool Charity Trust	Scottish Refugee Council
RCA Trust	Scottish Socialist Party
Reach	Scottish SPCA
Registrar of Companies for Scotland	Scottish Spina Bifida Association
Renfrewshire Council	Scottish Sports Association
RNID Scotland	Scottish Women's Aid
RNLI	Scott-Moncrieff
Rosneath Peninsula Amenity Society	ScotWays
Roxburgh Association of Voluntary Service	Scripture Union Scotland
Royal Botanic Gardens Edinburgh	SDEF
Royal College of General Practitioners	SEA Scotland
Royal College of Nursing	Sense Scotland
Royal College of Physicians of Edinburgh	SHERT, C/O Turcan Connell
Royal Commission for Ancient and Historic Monuments Scotland	Shetland Branch Arthritis care
Royal Institute of Chartered Surveyors Scotland	Shetland Charitable Trust
Royal National Lifeboat Institution	Shetland Isles Council
RSA Scottish Committee	Sick Kids Friends Foundation
RSPB Scotland Headquarters	Society of Arthritics Northern Division
Saheliya	South Ayrshire Council
Scottish Borders Council	South Edinburgh Amenities Group
Scottish Cancer Coalition, c/o Macmillan Cancer Relief	South Lanarkshire Council
Scottish Central Branch - National Federation of the Blind	St Margaret's School for Girls
Scottish Churches Committee	Stirling Council
Scottish Civic Forum	T C Young
Scottish Community Foundation	The Blair Charitable Trust
Scottish Community Ownership Housing Forum c/o West Whitlawburn Housing Co-operative	The Brethren
Scottish Council for Development and Industry	The Celtic Congress (scotland)
Scottish Council for Voluntary Organisations	The churches of god
Scottish Council of Independent Schools	The City of Edinburgh Council
Scottish Council of Jewish Communities	The Earl Haig Fund Scotland
Scottish Environment LINK	The Edinburgh Academy
Scottish Episcopal Church	The Highland Council
Scottish Federation of Housing Associations	The Institute of Chartered Accountants of Scotland
Scottish Funding Councils for Further and High Education	The Institution of Chemical Engineers
Scottish Grant Making Trust Group c/o BBC	The Institution of Structural Engineers
Children in Need	The Law Society of Scotland
Scottish Law Agents Society	The MacRobert Trust
Scottish Orthopaedic Research Trust into Trauma	The Manor Project Limited
Scottish Palestine Solidarity Campaign	

The Notre Dame Centre, Child Guidance Clinic  
The Presbytery of Lanark  
The Quaker Stewardship Committee of the  
Religious Society of Friends (Quakers) in Britain  
The Robert Gordon University  
The Robertson Trust  
The Rock Trust  
The Royal Environmental Health Institute of  
Scotland  
The Royal Society of Edinburgh  
The Salvation Army (Scotland Office)  
The Scottish Association for Mental Health  
The Scottish Association of Prostate Cancer  
Support Groups  
The Scottish Centre for Children with Motor  
Impairments  
The Scottish Inter Faith Council  
The Scottish National War Memorial  
The Scottish Out of School Care Network  
The University of Edinburgh  
The Welcome Trust  
The Wise Group  
Thorntons WS, Solicitors  
Turcan Connell Solicitors  
Turning Point Scotland  
Universities Scotland  
Universities Scotland  
University of Glasgow  
University of St Andrews  
University of Stirling  
Victim Support Scotland  
Voluntary Action East Renfrewshire  
Voluntary Action West Lothian  
Voluntary Arts Scotland  
Volunteer Development Scotland  
VONEF  
Waterside Action Group  
Welcome Trust  
West Dunbartonshire Council  
West Lothian Council  
West Whitlawburn Housing Co-Operative  
Limited  
William G A Stewart, Chartered Accountants  
Woodland Trust Scotland  
WRVS  
WS Society  
Youthlink Scotland  
In addition to 38 individuals

## RESPONDENT INFORMATION FORM: CHARITY ACCOUNTING REGULATIONS CONSULTATION

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual  go to Q2a/b and then Q4
- (b) **on behalf of** a group/organisation  go to Q3 and then Q4

### INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)

No, not at all  We will treat your response as confidential

- 2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

### ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation *will be* made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes

No  We will treat your response as confidential

### SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No

**CHARITIES AND TRUSTEE INVESTMENT  
(SCOTLAND) ACT 2005**

**PROPOSALS FOR REGULATIONS UNDER  
SECTION 15 ON CHARITY REFERENCES IN  
DOCUMENTS**

**CONSULTATION PAPER**

**SCOTTISH EXECUTIVE  
SEPTEMBER 2005**

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**CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005  
CONSULTATION ON PROPOSALS FOR REGULATIONS UNDER SECTION 15  
ON CHARITY REFERENCES IN DOCUMENTS**

**INTRODUCTION**

1. The Charities and Trustee Investment (Scotland) Act 2005 was passed by the Scottish Parliament on 9 June 2005 and received Royal assent on 14 July 2005. The Act improves and strengthens the regulation of charities operating in Scotland in a way that builds on the value that charities bring to Scottish society. It is intended that the majority of the provisions in the Act, relating to the basic regulation of charities by the Office of Scottish Charity Regulator (OSCR) in its new independent role, will come into force around April 2006.

2. This consultation paper sets out the Scottish Executive's proposals for the regulations to set out the circumstances and methods by which charities in Scotland must identify themselves as charities and on which documents etc. this must be done. The Scottish Ministers have powers to make regulations on this matter under section 15 of the Act. Our proposals are intended to help everyone to understand when they are dealing with a charity by ensuring that all charities always identify themselves adequately on formal documents etc.

3. The partial Regulatory Impact Assessment (page 19) sets out what we consider the impact of our proposals on charities and others will be.

4. The consultation is your opportunity to have your say about these plans before the regulations are drafted and laid before Parliament. We have highlighted key areas for comment with key questions and provided a summary of the main questions (at page 16). It would assist collation of responses if respondees used this summary for their response. However, your views on any aspect of the proposals within this document are also welcome.

You are invited to respond before the closing date on 13 December 2005 in writing to:

**Fiona Warne**

Charities Act References in Documents Consultation  
Voluntary Issues Unit  
Scottish Executive Development Department  
2-G, Victoria Quay  
Edinburgh EH6 6QQ  
Tel: 0131 244 4023  
Fax: 0131 244 5508  
Email: [charityact@scotland.gsi.gov.uk](mailto:charityact@scotland.gsi.gov.uk)]

**Please reply by 13 December 2005**

5. This consultation, and all other Scottish Executive consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

6. The Scottish Executive now has an email alert system for SE consultations (SEconsult at <http://www.scotland.gov.uk/Consultations/seConsult>). This system allows

stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultations activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### **Handling your response**

7. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** which is enclosed with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

8. All respondents should be aware that the Scottish Executive are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

9. Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Executive Library and on the Scottish Executive web pages by 16 January 2006. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

10. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the proposed regulations. We aim to issue a report on this consultation process around March 2006.

### **Comments and complaints**

11. If you have any comments about how this consultation exercise has been conducted, please send them to the address above.

## **THE SCOTTISH EXECUTIVE CONSULTATION PROCESS**

12. Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

13. The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience.

Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

14. Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses<sup>1</sup>. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

15. All Scottish Executive consultation papers and related publications (e.g. analysis of response reports) can be accessed at: [Scottish Executive consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations> )

16. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

17. Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**18. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

## **CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005**

### **CONSULTATION ON PROPOSALS FOR REGULATIONS UNDER SECTION 15 ON CHARITY REFERENCES IN DOCUMENTS**

#### **BACKGROUND**

19. The Charities and Trustee Investment (Scotland) Act 2005 was passed by the Scottish Parliament on 9 June 2005 and received Royal assent on 14 July 2005. It is currently intended that the majority of the provisions in the Act, relating to the basic regulation of charities by the Office of Scottish Charity Regulator (OSCR) in its new independent role, will come into force around April 2006.

20. There are several benefits available to a body which is able to qualify as a charity. These include direct financial benefits, such as some UK and local tax relief or being able to receive funding available specifically only to charities. However, there are also less direct benefits, such as the increased likelihood of receiving public donations or legacies and increased potential for voluntary assistance because of the increased public confidence that generally exists around charities because of the regulatory framework to ensure that charities live up to their intended purposes. Hence there are advantages to a body being able to identify itself as a charity.

21. One of the main reasons for wishing to ensure that charities clearly identify themselves on relevant documents is to ensure transparency. In the same way that it is important that persons intending to do business or have dealings with registered companies should know beforehand that the body is a company, it is also important to protect those dealing with charities. Charities have restrictions placed upon them by charity law on how they operate and it is only reasonable that prospective parties dealing with them are aware of this position. Some charities may also be registered companies, in which case it is important that persons dealing with them are aware of the restrictions placed on them by each status.

22. Generally the public is more trusting of charities as they believe that charities are strictly regulated and have to follow certain transparent procedures, ensuring that their property is used to further their charitable purposes, which will have public benefit. Many charities will therefore wish to identify themselves as such anyway, whatever mandatory requirements are set out in the law. However, ensuring that all charities identify themselves as such, will help inform the public and lead to greater confidence about which bodies are charities and which are not. OSCR has powers to investigate, and if necessary take regulatory action against, a person or a body which represents itself to be a charity, or to be acting on behalf of a charity when it is not.

#### **Current position in Scotland**

23. In the current Scottish charities regime, there is no statutory requirement specifically for all charities to identify themselves as such on either legal documents, letters or on public information (fundraising leaflets etc.). However several specific types of charities, depending

on their legal form (e.g. registered companies, etc.) are already under a legal duty to identify themselves as such under separate legislation (the Companies Acts etc.)

24. All charitable companies registered in Scotland are required<sup>1</sup>, as companies, to state their name in legible lettering, on all the company's business letters, notices and other official publications, bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by, or on behalf of the company, and all bills of parcels, invoices, receipts and letters of credit. In business letters and order forms the company must show its place of registration, its registered company number and registered office. If an officer of a company or person on its behalf issues or authorises issue of any of these documents, without the company name, he is liable to a fine<sup>2</sup>. In addition<sup>3</sup>, if their name does not include the terms "charity" or "charitable", charitable companies in Scotland have to state that the company is a charity in several legal and other business documents.

25. The Codes of Fundraising Practice prepared by the Institute of Fundraising highlight what is mandatory under the law, what the Institute regards as a mandatory requirement for its members and what constitutes advice on best practice. The Codes also state that the Institute recognises the separate jurisdictions across the UK but also expects members of the Institute to adhere to the most rigorous interpretation of the law applicable to an activity, whichever jurisdiction that activity derives from. The Code on Scottish charity law in relation to fundraising and public charitable collections (June 2002) clearly states that "Charities **must** always provide clear contact addresses on all publicity and fundraising materials, and should also show the Scottish Charity Number (issued by the Inland Revenue) on these materials. Though this requirement is not mandatory by law in Scotland, it is required by law in England and Wales". Hence many charities carrying out fundraising in Scotland are likely to already be following the requirements under English law to include statements about their name and /or charity status on many fundraising and other documents.

### **Current position in England and Wales**

26. There is already a statutory requirement<sup>4</sup> for registered charities in England and Wales with a gross income exceeding £10,000 to state the fact that it is a registered charity in legible characters-

(a) in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity;

(b) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity; and

(c) in all bills rendered by it and in all its invoices, receipts and letters of credit.

27. The statement must be in English, except where a document is otherwise wholly in Welsh, when the statement may be in Welsh if it consists of or includes the Welsh equivalent of the words "registered charity". It is also an offence for any person to issue, sign a

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<sup>1</sup> Companies Act 1985, clause 349.

<sup>2</sup> Companies Act 1985, clause 349

<sup>3</sup> Companies Act 1989, clause 112 (6)

<sup>4</sup> Charities Act 1993, clause 5

document or authorise the issue of any document which ought to make reference to the charity being registered, but does not do so.

28. The Charity Commission's current guidance expands on this requirement. The guidance emphasises that a charity with income exceeding £10,000 must indicate that the charity is registered on fundraising leaflets or appeal documents and on many of its financial documents, and also that such a charities website must include reference to ownership of the domain name of the website, stating that the organisation is a registered charity.

29. In addition, all charitable companies registered in England and Wales (whatever their income) have to comply with the same requirements under the Companies Act<sup>5</sup> as companies registered in Scotland (see paragraph 24 above). Similarly, charitable companies registered in England and Wales which do not have the term "charity" or "charitable" as part of its name are required<sup>6</sup> to state on relevant documents that the company is a charity.

### **UK-wide charities**

30. Many charities registered in England and Wales also operate within Scotland, and therefore tend, already, to include similar references to their charitable status on all documents as it is often not be worth having a separate set of documents for Scotland. However, under the new Scottish legislation, some non-Scottish charities, which currently only have to follow the requirements of their "home" regulator or legislation, will have to begin following new Scottish requirements if they register with OSCR. It may not be worthwhile for these charities to develop separate versions of relevant documents and they may wish to adopt the stricter of the requirements for use everywhere.

### **PROPOSALS FOR SCOTTISH REQUIREMENTS**

31. There appears to be little doubt that charities in Scotland should be required to provide information to clarify that they are charities on many relevant documents. This will increase transparency and help parties dealing with them know their status and be aware of potential restrictions. It will also help the public understand which bodies are charities and may be deserving of their support as appropriate. Increased public understanding should lead to increased confidence in the charity sector.

32. One fundamental question to consider is whether all charities in Scotland should have to identify themselves as such or whether this requirement should apply only to those above a relevant threshold. Alternatively, there could be separate levels of mandatory information according to the size or type of charity. There may be arguments both for and against such exemptions for smaller charities. The other main question to be considered is on which documents a charity must identify itself as a charity, and what information should be provided.

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<sup>5</sup> Companies Act 1985, clause 349

<sup>6</sup> Charities Act 1993, clause 68

## **References to charitable status**

33. Section 13 and 14 of the Charities and Trustee Investment (Scotland) Act 2005 set out the ways in which a body on the Scottish Charity Register may refer to its status. Hence a body on the register may choose to refer to itself as either a “charity”, a “charitable body”, a “registered charity” or a “charity registered in Scotland”. Only a body on the register which is also either established under the law of Scotland, or managed or controlled wholly or mainly in or from Scotland may refer to itself as a “Scottish charity” or a “registered Scottish charity”.

34. A body which is entitled to call itself a “charity” as a result of being established under the law of a territory outside Scotland, and managed or controlled wholly or mainly outwith Scotland can, as long as it does not occupy any land or premises in Scotland or carry out activities in any shop, office or similar premises in Scotland, refer to itself a charity (without being entered on the Scottish Charity Register). However, such a body may only do this if it also refers to being established under the law of a territory outwith Scotland. Hence, for example, a body registered in England and Wales with the Charity Commission and having only minor operations in Scotland, could refer to itself on documents in Scotland as being “registered as a charity in England and Wales” or a “registered English Charity” without having to register with OSCR.

## **Possible exemption for small charities?**

35. There are strong arguments that all charities, without exception, should have to include mandatory information on at least certain legal and fundraising documents in order to ensure that the parties dealing with all charities are aware of their status. In addition, the public will easily be able to tell that a body not identifying itself as a charity, is not one. Similarly, if every charity has to identify itself as such, it will be clear to members of the public when they are dealing with a charity – and therefore can have confidence that such bodies are well-regulated.

36. The Executive considers that requiring charities to identify themselves on relevant documents will not be too onerous, especially in view of the plans for a transitional period of grace to allow time for charities to make use of stocks of existing printed stationery etc. Even most small-to-medium charities are likely to have regular reprints of stationery or can make arrangements for additional information to be added (by stamp or even by hand). Many printed materials are these days printed direct from computers and this process can be easily updated. Large charities will tend to have faster turnover of stock and hence arranging updated printed material should not be too onerous. Very small charities may rely on hand-written letters, invoices etc. and hence can easily add an additional reference to a charity name or number. Many charities of all sizes probably already meet the proposed requirements voluntarily.

37. However, some might argue that very small charities should not be burdened by any requirements for information on their documents. In England and Wales, only registered charities with a gross income of more than £10,000 a year have to include references on documents. Data on the overall financial make up of the Scottish charity sector are not

currently available but from the information that is currently available<sup>7</sup> some 59% of a sample of Scottish charities have an annual income of less than £12,500. If this is representative of the whole sector perhaps some 10,000 (or half) of charities might be exempted by adopting a £10,000 income threshold.

38. The Executive considers that adopting a threshold of £10,000 pa would be too high as it could mean around half of the sector would not be covered by the requirements. The Charities and Trustee Investment (Scotland) Act requires all bodies wishing to refer to themselves as charities to register with OSCR (unless exempted by section 14). There is therefore not the same principle as in England and Wales that smaller charities need not register. Although many charities below the threshold may well choose to follow the same principles that would be mandatory for larger charities, we consider that this defeats one of the main purposes of having charity regulation. We therefore consider that either no exemption should be provided (requiring all charities to identify themselves in relevant documents) or that a smaller threshold should be applied (perhaps £5,000 income).

39. Not having an exemption threshold in Scotland may have a direct impact on UK-wide charities below the £10,000 England and Wales threshold. These bodies operating and having to register in Scotland would have to meet the mandatory reference in document requirements here. However, many probably already do comply, either as companies or voluntarily.

40. Alternatively, a different form of exemption threshold might be adopted. This might allow certain **types** of charities to be exempt (rather than by size). However, it is difficult to imagine what descriptions of a type of charity could reasonably be considered to cover an adequate description of those to be exempt.

41. The Executive does not propose to change the requirements for charitable companies to show their name on documents or to refer to themselves as charities if this is not included in the name. However, if additional requirements for all charities are added, then Scottish charitable companies would also have to comply with those additional requirements.

**Question 1: Do you agree that all charities should have to follow the same mandatory requirements for references in documents (i.e. no exemptions)? Or do you consider that a financial threshold (such as a gross income of £5,000 pa) should be used to exempt smaller charities? If such an exemption threshold were to be set, what level do you consider is appropriate?**

**Question 2: Do you agree that requirements in relation to references in documents should be unchanged for charitable companies registered as companies in Scotland?**

### **Which documents should identify that a body is a charity?**

42. The Executive's intention is that any document representing that a body is a charity or purporting to be on behalf of a charity should be covered by the requirement to demonstrate that fact by including certain identification. Hence all types of legal document, documents

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<sup>7</sup> "Analysis of the Scottish Charity Sector" SCVO February 2004

soliciting funds or support, financial documents or bills, invoices and other legal or financial documents should state that the body is a charity on the Scottish Charity Register (or use the expressions as described in paragraph [ ] in accordance with sections 13 and 14 of the Act).

### **Legal documents**

43. This category would cover legal matters such as the charity's constitution, memoranda of understanding or agreement, annual accounts and the trustee's annual report or any other legal notices.

### **Documents soliciting funds**

44. This category would cover any document such as advertisements and other documents issued by or on behalf of a charity which solicit money or other property for the charity's benefit. Documents such as fundraising leaflets, letters seeking or offering grants, contributions or donations, advertisements of employment, offers of grants, offers to provide services are included. Solicitation would include whether the solicitation is express or implied, and also whether any money or other property is to be given for any consideration or not. Hence any document offering goods or services in return for money or providing "free" gifts, newsletters or membership etc. in exchange for funds would be included.

### **Financial documents**

45. This category would cover monetary documents such as those covered in the second category in clause 5 (2)(b) of the Charities Act 1993 (see paragraph 26). This includes all bills of exchange, promissory notes, endorsement, cheques and orders for money or goods purporting to be signed on behalf of the charity.

### **Bills, invoices etc.**

46. This third category includes all bills, rendered by the charity or on its behalf, and all invoices, receipts and letters of credit.

### **Web-sites**

47. Many charities now utilise web-sites to make information available or to seek donations etc. Many of the documents already described above may also be made available on a charity web-site, but in addition the Executive considers that all charities should be expected to ensure that the web-site itself, no matter what documents are included, should clearly indicate that the body is a charity- with the similar references as other documents. This will increase the transparency of the sector and help to highlight where a body is eligible to cannot claim to be a charity or those which cannot..

**Question 3: Do you agree with the main categories of document proposed to be included in the Regulations as requiring mandatory identification information? Are there other types or examples of document which should be included? Is the format in the Charities Act 1993 (clause 5) the best way to describe them (these are shown in paragraph 26)?**

**What information should be provided?**

48. The Executive proposes that the documents described above should have certain information clearly and legibly included so that the public can identify that the body in question is a charity, and can easily identify the charity and its purposes. OSCR's powers to ensure that a charity's name is not misleading (under section 10, 11 and 12 of the Act) should ensure that **the only information needed in documents is the charity's name and perhaps a charity identification number**. This would allow a member of the public to reasonably easily obtain further information about the charity in question from the Scottish Charity Register on OSCR's web-site or from OSCR, or from the charity itself. Hence the documents should include the charity's name (clearly stating that it is a charity if this is not included in the name) and the charity's reference number. OSCR is currently considering how best to identify charities on the Scottish Charity Register, possibly using the same six digit reference numbers as those given to existing Scottish Charities by HM Revenue and Customs (previously the Inland Revenue), with an "OSCR" prefix instead of an "SC" prefix.

49. Charitable companies are already required, as are all companies, to state their company registration number on all their business letters and order forms and this requirement will not be affected by the proposed regulations.

**Question 4: Do you agree that the information charities should be required to include on documents is their name (stating that they are a charity if not included in the name)? Should they also be required to include a charity reference number?**

**What if a charity is known by a number of different names?**

50. The Scottish Charity Register is required to include certain information about each charity in Scotland. This includes the "name of the charity". The Executive proposes that this is normally the name that is to be included on formal documents as required by the section 15 regulations. However, some charities may wish also to make use of alternative names in some circumstances (or perhaps a logo instead of a name on some documents). Despite this, the Executive proposes that all formal documents (as described in paragraphs 42 - 47) must indicate the formal name of the charity, as this increases transparency and should assist members of the public and OSCR to identify which charity is referred to and assist gathering of further information on the charity. This formal name could for instance be included as a footnote on letter sheets where an alternative name or logo is used in the main heading on the sheet.

**Question 5: Do you agree that the "normal" charity name which appears on the Register should be included in all formal documents under section 15?**

**Use of Gaelic or other languages?**

51. As provided for in section 15 of the Act, the Executive proposes that references in relevant documents must normally be in English except in the case of a document which is otherwise wholly in another language, for instance Gaelic, when a similar statement and information is to be conveyed, but this may be translated into that language.

**Question 6: Is this the correct approach to documents in other languages?**

**Additional information on specific types of charity**

## **Designated religious charities**

52. There are a number of specific types of charity for which it might be considered useful to the public that the charities are identified as such. Designated religious charities (DRCs) may be designated by OSCR under section 65 of the Act. These charities must fulfil specific criteria and in return they, and their component elements, are exempt from some of the regulatory powers normally exercised by OSCR. The Executive considers that DRCs (and each of their component elements) ought to identify themselves as such as part of the mandatory references in documents under the proposed regulations. It is reasonable that the public is provided with adequate information to allow an understanding of the positions that such charities hold. For DRCs, the Executive proposes that the mandatory reference on most documents (although this may not be feasible due to lack of space for instance on cheques or other small documents) should include information along the lines of “[body X] (or [charity X]) is a component element of [charity Y], which is a Designated religious charity”. If the component element is also a charity in its own right, the normal references in documents information should be provided as well as an indication of the “parent” DRC.

**Question 7: Do you agree that component elements of Designated religious charities should have to provide the additional information, as proposed, on all formal documents?**

## **Designated National Collectors**

53. OSCR is able (under section 87 of the 2005 Act) to designate some organisations that carry out public benevolent collections in several local authority areas as Designated national collectors. These organisations may then be exempt from some of the requirements relating to applications for local authority licences to hold a public benevolent collection. It may be reasonable that these organisations should also follow specific requirements to identify their status. However, further regulations on fundraising are planned over the next few years and the Executive proposes not to include any provisions relating to these bodies in the current proposals.

## **Transitional provisions to allow charities to use up existing paperwork and copies of documents**

54. The Executive proposes that temporary arrangements should be provided to allow a period of grace (perhaps 12 months), from the date that section 15 comes into force, to allow existing Scottish Charities to use up existing stocks of printed documents which may not comply with the new regulations under section 15 requiring references to the charity on formal documents. These transitional provisions would ensure that such charities were not breaching the law for a period while existing stationery is used up and allow time to change other documents. Powers to provide for such temporary arrangements in the regulations are included in section 15(2)(a). Similar provisions (using powers given to the Scottish Ministers in section 99(3)(b) of the 2005 Act), and with a period of 12 months, would be provided for “unregistered charitable bodies” (e.g. those bodies defined in section 99(3), such as registered charities in England and Wales which may have to also register with OSCR under the new regime).

**Question 8: Do you agree that 12 months from the date the proposed regulations come into force is an appropriate period of grace for existing charities and “unregistered charitable bodies” (e.g. charities registered outwith Scotland) to use up existing stationery and make relevant changes?**

### **Enforcement of the proposed regulations**

55. The 2005 Act does not provide similar provisions to those in the England and Wales Charities Act 1993 which impose a direct offence for a person who issues, authorises or signs a document which contravenes the requirements to include a statement to identify the charity. However, under the 2005 Act, section 66 makes it clear that a charity trustee has a general duty to ensure that the charity complies with any duty imposed on it by the Act. The proposed regulations would become such an imposed duty and any breach of duty by a trustee is to be treated by OSCR as being misconduct in the administration of that charity. In addition, if OSCR considers that the duty to provide a reference to documents has not been complied with, it may initiate an inquiry and if necessary take regulatory action to remedy any non-compliance. OSCR may issue a direction under section 31 restricting the transactions which may be entered into without OSCR’s consent. It is an offence not to comply with such a direction from OSCR.

### **Scottish charitable incorporated organisations (SCIO)**

56. Scottish charitable incorporated organisation is the new form that charities will be able to adopt as provided for in the new 2005 Act. Although there will be requirements for SCIOs to also identify themselves as such on relevant documents, the Executive proposes that regulations setting out the details of this will be made later, as part of a package of regulations concerning SCIOs. The regulations proposed in this consultation document therefore will not apply to SCIOs.

### **The Partial Regulatory Impact Assessment (RIA)**

57. The partial regulatory impact assessment examines the impact of the proposed references in documents requirements on charities, the sector and OSCR. It aims to assess the impact on small charities of having an exemption threshold or not, the impact of Scottish requirements on UK charities and also the overall cost to charities of having to provide the proposed information. This is compared with the benefits to the public of having this information universally available and the benefits to charities of having public confidence in the sector generally. A finalised version of the RIA will be prepared to accompany the final regulations. Any additional information that consultees are able to provide to provide for the RIA would be welcomed.

**Question 9: Does the RIA provide an accurate picture of the impact of the proposed requirements and options? Do you have any comments on the draft RIA? Are you able to provide any further information which might help expand or improve the RIA?**

## **CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005**

### **CONSULTATION ON PROPOSALS FOR REGULATIONS UNDER SECTION 15 ON CHARITY REFERENCES IN DOCUMENTS**

#### **SUMMARY OF QUESTIONS ASKED IN CONSULTATION PAPER**

Question 1: Do you agree that all charities should have to follow the same mandatory requirements for references in documents (i.e. no exemptions)? Or do you consider that a financial threshold (such as a gross income of £5,000 pa) should be used to exempt smaller charities? If such an exemption threshold were to be set, what level do you consider is appropriate?

Question 2: Do you agree that requirements in relation to references in documents should be unchanged for charitable companies registered as companies in Scotland?

Question 3: Do you agree with the main categories of document proposed to be included in the Regulations as requiring mandatory identification information? Are there other types or examples of document which should be included? Is the format in the Charities Act 1993 (section 5) the best way to describe them?

Question 4: Do you agree that the information charities should be required to include on documents is their name (stating that they are a charity if not included in the name)? Should they also be required to include a charity reference number?

Question 5: Do you agree that the “normal” charity name which appears on the Register should be included in all formal documents under section 15?

Question 6: Is this the correct approach to documents in other languages?

Question 7: Do you agree that component elements of Designated religious charities should have to provide the additional information, as proposed, on all formal documents?

Question 8: Do you agree that 12 months from the date the proposed regulations come into force is an appropriate period of grace for existing charities to use up existing stationery and make relevant changes?

Question 9: Does the RIA provide an accurate picture of the impact of the proposed requirements and options? Do you have any comments on the draft RIA? Are you able to provide any further information which might help expand or improve the RIA?

Name:.....

Position.....

Organisation.....

Address.....

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Date.....

**CHARITIES AND TRUSTEE INVESTMENT  
(SCOTLAND) ACT 2005**

**PROPOSALS FOR REGULATIONS UNDER  
SECTION 15 ON CHARITY REFERENCES IN  
DOCUMENTS**

**PARTIAL REGULATORY IMPACT  
ASSESSMENT**

**SCOTTISH EXECUTIVE  
SEPTEMBER 2005**

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

## CONSULTATION ON PROPOSALS FOR REGULATIONS UNDER SECTION 15 ON CHARITY REFERENCES IN DOCUMENTS

### PARTIAL REGULATORY IMPACT ASSESSMENT

#### Introduction

1. This draft Regulatory Impact Assessment aims to provide information on the options considered in relation to the proposed regulations under section 15 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) on references in documents regulations for charities registered in Scotland, and their likely impact on the charitable sector. Under Scottish Cabinet rules, any piece of legislation which will create or extend a regulatory regime must include a consideration of the impact of regulation on the relevant sector. We would welcome your comments on the assumptions made here, in order to revise this RIA and improve its accuracy.

#### Purpose and intended effect of regulations

##### *(i) Objectives*

2. The Scottish Executive is committed to reform the regulatory regime for charities, in order to support the charities sector and to safeguard the public interest in relation to charities. The Charities and Trustee (Scotland) Act 2005 has recently received Royal Assent. This draft Regulatory Impact Assessment (RIA) forms part of the consultation paper setting out the Executive's proposals for the references in documents regulations under section 15 of the Act. These regulations will set out the circumstances when charities must identify themselves as a charity on documents issued or signed on behalf of the charity.

3. This RIA provides background information on the options which were considered in developing the proposals, and the probable impact and cost of these options. We would welcome views on the issues considered in this RIA, which will be amended and published in final form when the regulations are laid before the Scottish Parliament.

4. **Devolution:** The regulations will only apply to charities registered in Scotland.

##### *(ii) Background*

5. The Charities and Trustee Investment (Scotland) Act 2005 received Royal assent on 14 July 2005. Proposals for the Bill had been consulted on during the summer of 2004.

6. Section 15 of the Act confers powers on Ministers to make regulations to require each body registered on the Scottish Charity Register to state that it is a charity and such other information as may be specified in the regulations on specified documents issued or signed on behalf of the charity. There are currently no such requirements for charities in Scotland, unless they are also registered companies (in which case Companies legislation requires them to identify themselves on legal documents and to identify themselves as charities if the name does not make this clear). Similar requirements already exist in England and Wales for all

charities above an income threshold of £10,000 per annum. Many Scottish charities already follow this procedure in practice.

7. There is a public benefit in having charities identify themselves on documents as it aids transparency and confidence that unless such identification is shown, the documents do not refer to a registered charity. It allows those doing business with a charity to be aware that there are restrictions (and a regulatory regime) under which the body operates. It also provides basic information which can make it easier for the public to find further details about the charity, either from the charity regulator (OSCR) or from the charity itself. Many charities actually choose already to identify themselves as a charity, as this can encourage public confidence and may lead to increased public interest in the document or its contents. On fundraising documents, this can increase the likelihood of increased donations.

### ***(iii) Rationale for government intervention***

8. The impact of the current position is that with no requirement for charities to identify themselves on documents (unless they are also registered companies), there is often a lack of clarity to the public and parties doing business with charities. This can also lead to a lack of confidence in the sector and confusion as to whether a body is a charity or not. Whilst some charities choose to identify themselves because of the benefits they consider this gives, there is no consistency. Hence the impact of the “do nothing” option is for this confusion and lack of consistency to continue.

### ***(iv) Risk assessment***

9. The new regulations are an important part of the implementation of the Act. Without the new regulations, there would be no mandatory identification of a charity on its documents, possibly leading to a risk for those doing business with charities, confusion and less confidence in the sector as a whole. It may lead to increased incidents of non-charities being able to represent themselves as charities with less chance that such occurrences will be apprehended. The sector itself has called for a more robust regulatory regime and these regulations will form an important part of this. The equivalent legislative requirements in England and Wales are contained on the face of the Charities Act 1993 (clause 5) but it was considered more appropriate for the detailed Scottish requirements to be set out in secondary legislation as it is simpler to update them as practices change over time.

## **Consultation**

### **Within government**

10. The following government agencies and departments have been consulted in preparation of this [partial] RIA:

Office of the Scottish Charity Regulator (OSCR).

### **Public consultation**

11. A public consultation is being carried out on the proposals for the regulations from August to November 2005. The responses (and a summary) will be published before the regulations are finalised and laid before the Parliament in spring 2006.

## Options

### *Option 1: Do nothing*

12. Not having regulations to require mandatory references on charity status in documents is likely to lead to increased risks for those doing business with charities and inconsistency across the sector with an increased chance that non-charities can successfully pose as charities. Unless charities are required to identify themselves people will find it more difficult to check on the validity of a document or seek further details about the charity either issuing it or on whose behalf it is issued. Without regulations on this, OSCR would not have powers to take regulatory action against a charity failing to provide adequate information. It is likely that without regulations on this matter, OSCR would be forced to issue non-statutory guidance to charities on what identification should be included on their documents, although such guidance would not be enforceable. The overall regulatory charity regime would be undermined and the expected increase in public confidence in charities may not be delivered.

### *Option 2: Require all charities to identify themselves on relevant documents.*

13. This option will ensure that any relevant document issued by or on behalf of a charity will identify the charity, allowing people to check more easily on the charity and seek further information. Any document issued on or for a non-charity should be more easily spotted.

### *Option 3: Require only certain (larger) charities to identify themselves on relevant documents. (i.e. set a threshold below which charities are exempt).*

14. This option will ensure the larger charities comply with identification requirements on documents, but avoid smaller charities having to do so - possibly saving some nominal expenditure by those small bodies least able to afford it. However, many smaller charities would probably choose to identify themselves as charities anyway, hence negating any saving from being exempt from the regulatory requirements. Not having all charities identified on their documents may undermine the regime and lead to confusion and increased likelihood of non-charities confusing the public. It is considered that the nominal savings may be outweighed by the costs to the sector generally of not having as robust a regime. **[the accompanying consultation paper seeks views on whether such a threshold should be introduced]**

## Costs and benefits

### **Business sectors affected**

15. All existing charities operating in Scotland (thought to be some 20,000 active charities) and some UK charities which may have to register with OSCR depending on their operations here, will be affected by the proposals in the attached consultation paper. OSCR has estimated that some 400 UK charities currently claim tax relief from local authorities in Scotland – and so are likely to have to register here for the first time. Scottish charitable companies (of whom it has been estimated from initial inspection of the Companies House register that there are some 5,000 out of the overall 20,000 Scottish charities) will not be affected by the proposals as there are already requirements (under Companies legislation) to make similar statements on documents. In general these are expected to be the larger charities – and hence above any potential exemption threshold. Component elements of a Designated Religious Charity would also have to identify that fact on documents under the

proposals. Many of these are already charities in their own right, and hence will be covered anyway, but some may not be. It is not known how many such component bodies there are currently part of Designated Religious Bodies, but a reasonable estimate is some [2500 maximum – as there are some 500 catholic and 1500 Church of Scotland bodies – **the Executive would be grateful if respondees are able to provide further information on the numbers of such bodies likely to be affected**]. If option 3 (with an exemption threshold) is adopted, smaller charities would not be affected by the regulations, except there may be a general negative impact on them as a result of confidence in the sector not being boosted as much as might occur with option 2. Small charities might be disproportionately affected by any potential loss in public confidence and donations (as many smaller charities are probably more reliant on donations).

## **Benefits**

### *Option 1: Do Nothing*

16. There are no tangible benefits to this option as there will be no clear regulatory requirements for charities to follow, relying only on individual bodies deciding to identify themselves as charities on documents. Charitable companies already have similar obligations under Companies legislation. This would cause confusion among charities as to what they were required to do to comply with the provisions in the Charities and Trustee Investment (Scotland) Act and would not provide clarity for the general public. OSCR may choose to provide guidance on what it considers best practice but there would be no regulatory requirement to follow this. The savings to charities not having to include references in documents would be minimal.

### *Option 2: Require all charities to identify themselves on relevant documents.*

17. This option would provide consistency across the Scottish sector and is most likely to reduce the risks for those doing business with charities. It is most likely to lead to increased public confidence in charities as information would be available to the public on all relevant charity documents. Setting out the details in regulations allows the requirements to be easily updated if practices in the sector change and new forms of charity communication and fundraising etc. evolve.

### *Option 3: Require only certain (larger) charities to identify themselves on relevant documents. (i.e. set a threshold below which charities are exempt).*

18. This option would require only the larger charities to identify themselves on relevant documents, leading to nominal savings for small charities- but only if they choose not to include identification on their documents. In practice many already choose to follow the "normal practice" of identifying their organisation as they consider it provides benefits anyway. Depending on the level of threshold chosen, this could mirror the position in England and Wales (where charities with an income below £10,000 are exempt). This would exempt approximately half of existing Scottish Charities but the savings for them are thought to be only nominal.

## **Costs**

### *Option 1: Do Nothing*

19. There would be no direct costs to charities from option 1 with no regulatory requirement to identify themselves on documents. However, many charities already do this and would probably continue to do so. There may be indirect costs to charities, particularly small charities more reliant on public donations if confidence in charities is not boosted because transparency is not increased and confusion over whether bodies are charities continues.

*Option 2: Require all charities to identify themselves on relevant documents.*

19. It has not been possible to provide accurate estimates of the expected compliance costs. These will vary depending on the size and type of charity, but are expected to be nominal. The main cost is likely to be from having to reprint any stationery with new identification to meet the new requirements. The planned transitional period of grace to allow existing bodies to use up existing stocks should minimise any wastage costs. Many charities, especially larger bodies (which are more likely to be registered companies and hence already required to provide references to this in documents) will probably have little or no additional costs.

20. Very small charities may rely on hand-written documents in the main, in which case there will be no cost in adding identifying references. Based on a sample quoted cost of some £150 per 1,000 sheets for printed letterheads etc, it may be that if some charities have to have some stationery reprinted, the cost to each might be £0.15 x average no. of sheets used per year]. This cost is not expected to be significant in comparison to normal administration costs. Larger charities, if not already subject to similar requirements will be expected to absorb any additional costs, which should be nominal, in their normal administration costs. In many cases, charities are likely to use PC generated documents, for which additional identification can be easily added at little or no extra cost. **[The Executive would welcome any information from charities which indicates how much these costs might be – to be included in the final RIA]**

*Option 3: Require only certain (larger) charities to identify themselves on relevant documents. (i.e. set a threshold below which charities are exempt).*

21. If a threshold of £5,000 were chosen, some [5,000??] charities with incomes below this would remain unaffected by the regulations. However, as the expected costs for such small charities are small, the savings from this option compared to option 2 are probably nominal. [It is hoped that further information on the make-up of the Scottish charity sector will shortly become available as a result of OSCR's monitoring programme. This will be used to feed into the final RIA. **The Executive would welcome any views from respondents about actual costs to small charities and the likely impact of these regulations]**

### **The Small Firms' Impact Test**

22. The regulations only apply to charities we therefore do not expect that they will have an impact on small firms or micro-businesses.

### **Test run of business forms**

23. No business forms will be involved in the proposed regulations. The consultation paper seeks views on what information should be required to identify a charity (e.g. its name, reference number etc.).

## Competition assessment

24. The proposals will introduce a proportionate and consistent regulatory regime for all charities operating in Scotland. If an exemption threshold is introduced the requirements will be greater for larger charities, and the burdens on even smaller organisations are expected to be minimal. The main reason for requiring charities to identify themselves as such is to ensure fairness, in that persons dealing with charities are aware of that fact.

25. The references in documents regulations for charities as set out in the consultation paper are not expected to have any impact on competition. It will make charities' activities more transparent, and clarify their status to all who deal with them, both businesses and the public. However it will not distort or restrict competition within markets in which charities operate.

## Enforcement, sanctions and monitoring

26. The provisions will be enforced by the Office of the Scottish Charity Regulator (OSCR). Whilst the Act does not provide a specific offence for failing to comply with the proposed regulations, non-compliance may be taken by OSCR to be misconduct. OSCR has powers under section 31 of the 2005 Act to direct a person or body to comply with the regulations and non-compliance with the direction can be an offence. OSCR may suspend any person concerned in the management or control of a charity or body that appears to it to have been responsible for the misconduct. There will be a right of appeal to an Appeal Panel against any of these sanctions. Charitable companies failing to comply with the existing requirements are already a direct offence under companies legislation.

27. The regulator will be tasked with reviewing implementation of the legislation and regulations, and advising the Executive of any need for change. The Executive will review the impact of the regulations within ten years of it coming into force.

28. **[The following further sections of the RIA will be completed for the final version, feeding in information from the consultation responses and the final options chosen.**

Implementation and delivery plan

Post-implementation review

Summary and recommendations.]

## Consultation

29. The Charities and Trustee Investment (Scotland) Bill was developed following extensive consultation. This draft RIA and the proposals for the references in documents regulations contained in the accompanying consultation paper are now produced for comment. It has been distributed to a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities, professional bodies, local authorities, and all those organisations which have responded to previous Executive consultations on charity law reform. We encourage you to submit comments on this approach, and any evidence on costs and benefits that may inform the legislative process.

30. It is also available on the Scottish Executive website consultations page.

31. We would value any comments on this RIA, along with responses to the consultation **by 13 December 2005.**

### **Contact**

Any queries about this RIA should be addressed to:

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